

AMENDED IN SENATE MARCH 30, 2005

SENATE BILL

No. 116

Introduced by Senators Dutton, Scott, and Simitian
**(Coauthors: Senators Chesbro, Cox, Ducheny, Escutia, *Figueroa*,
Margett, and Runner)**

January 25, 2005

An act to amend Section 1255.7 of the Health and Safety Code, to amend Section 271.5 of the Penal Code, and to amend Section 14005.24 of, and to amend and repeal Sections 300 and 361.5 of, the Welfare and Institutions Code, relating to abandonment of newborns.

LEGISLATIVE COUNSEL'S DIGEST

SB 116, as amended, Dutton. Child abandonment: newborns.

Existing law makes it a crime for a parent of a minor child, without lawful excuse, to not furnish necessary clothing, food, shelter, or medical or remedial care for the child, or to refuse, without lawful excuse, to accept the child in his or her home or provide alternate shelter. Existing law also makes it a crime for a parent of a child under the age of 14 years to desert the child with intent to abandon, or for any person to knowingly or willfully abandon or, having the ability to refuse to do so, fail to maintain his or her child under the age of 14 years.

Existing law, until 2006, provides that no parent or other person having lawful custody of a minor child 72 hours old or younger may be prosecuted for a violation of the above crimes if he or she voluntarily surrenders physical custody of the child to an employee on duty at a public or private hospital emergency room, or any additional location designated by the board of supervisors. Existing law provides that within 48 hours of accepting the physical custody of a child who is surrendered pursuant to these provisions, the personnel that have custody of the child must notify child protective services or a county

agency providing child welfare services. Existing law requires that agency to immediately notify the State Department of Social Services of each child to whom this provision applies upon taking temporary custody of the child.

This bill would delete that date ~~there~~ *by thereby* extending those provisions indefinitely. By expanding the duties of local public entities and employees, the bill would impose a state-mandated local program.

The California Constitution requires the state to reimburse local agencies and school districts for certain costs mandated by the state. Statutory provisions establish procedures for making that reimbursement.

This bill would provide that, if the Commission on State Mandates determines that the bill contains costs mandated by the state, reimbursement for those costs shall be made pursuant to these statutory provisions.

Vote: majority. Appropriation: no. Fiscal committee: yes.
State-mandated local program: yes.

The people of the State of California do enact as follows:

- 1 SECTION 1. Section 1255.7 of the Health and Safety Code is
- 2 amended to read:
- 3 1255.7. (a) (1) For purposes of this section, “safe-surrender
- 4 site” means either of the following:
- 5 (A) A location designated by the board of supervisors of a
- 6 county to be responsible for accepting physical custody of a
- 7 minor child who is 72 hours old or younger from a parent or
- 8 individual who has lawful custody of the child and who
- 9 surrenders the child pursuant to Section 271.5 of the Penal Code.
- 10 (B) A location within a public or private hospital that is
- 11 designated by that hospital to be responsible for accepting
- 12 physical custody of a minor child who is 72 hours old or younger
- 13 from a parent or individual who has lawful custody of the child
- 14 and who surrenders the child pursuant to Section 271.5 of the
- 15 Penal Code.
- 16 (2) *For purposes of this section, “parent” means a birth*
- 17 *parent of a minor child who is 72 hours old or younger.*

(3) For purposes of this section, “personnel” means any person who is an officer or employee of a safe-surrender site or who has staff privileges at the site.

~~(3)~~

(4) A hospital and any safe-surrender site designated by the county board of supervisors shall post a sign utilizing a statewide logo that has been adopted by the State Department of Social Services that notifies the public of the location where a minor child 72 hours old or younger may be safely surrendered pursuant to this section.

(b) Any personnel on duty at a safe-surrender site shall accept physical custody of a minor child 72 hours old or younger pursuant to this section if a parent or other individual having lawful custody of the child voluntarily surrenders physical custody of the child to personnel who are on duty at the safe-surrender site. Safe-surrender site personnel shall ensure that a qualified person does all of the following:

(1) Places a coded, confidential ankle bracelet on the child.

(2) Provides, or makes a good faith effort to provide, to the parent or other individual surrendering the child a copy of a unique, coded, confidential ankle bracelet identification in order to facilitate reclaiming the child pursuant to subdivision (f). However, possession of the ankle bracelet identification, in and of itself, does not establish parentage or a right to custody of the child.

(3) Provides, or makes a good faith effort to provide, to the parent or other individual surrendering the child a medical information questionnaire, which may be declined, voluntarily filled out and returned at the time the child is surrendered, or later filled out and mailed in the envelope provided for this purpose. This medical information questionnaire shall not require any identifying information about the child or the parent or individual surrendering the child, other than the identification code provided in the ankle bracelet placed on the child. Every questionnaire provided pursuant to this section shall begin with the following notice in no less than 12-point type:

NOTICE: THE BABY YOU HAVE BROUGHT IN TODAY MAY HAVE SERIOUS MEDICAL NEEDS IN THE FUTURE THAT WE DON’T KNOW ABOUT TODAY. SOME ILLNESSES, INCLUDING CANCER, ARE BEST TREATED

1 WHEN WE KNOW ABOUT FAMILY MEDICAL
2 HISTORIES. IN ADDITION, SOMETIMES RELATIVES ARE
3 NEEDED FOR LIFE-SAVING TREATMENTS. TO MAKE
4 SURE THIS BABY WILL HAVE A HEALTHY FUTURE,
5 YOUR ASSISTANCE IN COMPLETING THIS
6 QUESTIONNAIRE FULLY IS ESSENTIAL. THANK YOU.

7 (c) Personnel of a safe-surrender site that has physical custody
8 of a minor child pursuant to this section shall ensure that a
9 medical screening examination and any necessary medical care is
10 provided to the minor child. Notwithstanding any other provision
11 of law, the consent of the parent or other relative shall not be
12 required to provide that care to the minor child.

13 (d) (1) As soon as possible, but in no event later than 48 hours
14 after the physical custody of a child has been accepted pursuant
15 to this section, personnel of the safe-surrender site that has
16 physical custody of the child shall notify child protective services
17 or a county agency providing child welfare services pursuant to
18 Section 16501 of the Welfare and Institutions Code, that the
19 safe-surrender site has physical custody of the child pursuant to
20 this section. In addition, any medical information pertinent to the
21 child's health, including, but not limited to, information obtained
22 pursuant to the medical information questionnaire described in
23 paragraph (3) of subdivision (b) that has been received by or is in
24 the possession of the safe-surrender site shall be provided to that
25 child protective services or county agency.

26 (2) Any personal identifying information that pertains to a
27 parent or individual who surrenders a child that is obtained
28 pursuant to the medical information questionnaire is confidential
29 and shall be exempt from disclosure by the child protective
30 services or county agency under the California Public Records
31 Act (Chapter 3.5 (commencing with Section 6250) of Division 7
32 of Title 1 of the Government Code). Any personal identifying
33 information that pertains to a parent or individual who surrenders
34 a child shall be redacted from any medical information provided
35 to child protective services or the county agency providing child
36 welfare services.

37 (e) Child protective services or the county agency providing
38 child welfare services pursuant to Section 16501 of the Welfare
39 and Institutions Code shall assume temporary custody of the
40 child pursuant to Section 300 of the Welfare and Institutions

1 Code immediately upon receipt of notice under subdivision (d).
 2 Child protective services or the county agency providing child
 3 welfare services pursuant to Section 16501 of the Welfare and
 4 Institutions Code shall immediately investigate the circumstances
 5 of the case and file a petition pursuant to Section 311 of the
 6 Welfare and Institutions Code. Child protective services or the
 7 county agency providing child welfare services pursuant to
 8 Section 16501 of the Welfare and Institutions Code shall
 9 immediately notify the State Department of Social Services of
 10 each child to whom this subdivision applies upon taking
 11 temporary custody of the child pursuant to Section 300 of the
 12 Welfare and Institutions Code. As soon as possible, but no later
 13 than 24 hours after temporary custody is assumed, child
 14 protective services or the county agency providing child welfare
 15 services pursuant to Section 16501 of the Welfare and
 16 Institutions Code shall report all known identifying information
 17 concerning the child, except personal identifying information
 18 pertaining to the parent or individual who surrendered the child,
 19 to the California Missing Children Clearinghouse and to the
 20 National Crime Information Center.

21 (f) If, prior to the filing of a petition under subdivision (e), a
 22 parent or individual who has voluntarily surrendered a child
 23 pursuant to this section requests that the safe-surrender site that
 24 has physical custody of the child pursuant to this section return
 25 the child and the safe-surrender site still has custody of the child,
 26 personnel of the safe-surrender site shall either return the child to
 27 the parent or individual or contact a child protective agency if
 28 any personnel at the safe-surrender site knows or reasonably
 29 suspects that the child has been the victim of child abuse or
 30 neglect. The voluntary-surrendering ~~surrender~~ of a child pursuant
 31 to this section is not in and of itself a sufficient basis for
 32 reporting child abuse or neglect. The terms “child abuse,” “child
 33 protective agency,” “mandated reporter,” “neglect,” and
 34 “reasonably suspects” shall be given the same meanings as in
 35 Article 2.5 (commencing with Section 11164) of Title 1 of Part 4
 36 of the Penal Code.

37 (g) Subsequent to the filing of a petition under subdivision (e),
 38 if within 14 days of the voluntary surrender described in this
 39 section, the parent or individual who surrendered custody returns
 40 to claim physical custody of the child, the child welfare agency

1 shall verify the identity of the parent or individual, conduct an
2 assessment of his or her circumstances and ability to parent, and
3 request that the juvenile court dismiss the petition for
4 dependency and order the release of the child, if the child welfare
5 agency determines that none of the conditions described in
6 subdivisions (a) to (d), inclusive, of Section 319 of the Welfare
7 and Institutions Code currently exist.

8 (h) A safe-surrender site, or personnel of the safe-surrender
9 site, that accepts custody of a surrendered child pursuant to this
10 section shall not be subject to civil, criminal, or administrative
11 liability for accepting the child and caring for the child in the
12 good faith belief that action is required or authorized by this
13 section, including, but not limited to, instances where the child is
14 older than 72 hours or the parent or individual surrendering the
15 child did not have lawful physical custody of the child. This
16 subdivision does not confer immunity from liability for personal
17 injury or wrongful death, including, but not limited to, injury
18 resulting from medical malpractice.

19 (i) (1) In order to encourage assistance to persons who
20 voluntarily surrender physical custody of a child pursuant to this
21 section or Section 271.5 of the Penal Code, no person who,
22 without compensation and in good faith, provides assistance for
23 the purpose of effecting the safe surrender of a minor 72 hours
24 old or younger shall be civilly liable for injury to or death of the
25 minor child as a result of any of his or her acts or omissions. This
26 immunity does not apply to any act or omission constituting
27 gross negligence, recklessness, or willful misconduct.

28 (2) For purposes of this section, “assistance” means
29 transporting the minor child to the safe-surrender site as a person
30 with lawful custody, or transporting or accompanying the parent
31 or person with lawful custody at the request of that parent or
32 person to effect the safe surrender, or performing any other act in
33 good faith for the purpose of effecting the safe surrender of the
34 minor.

35 (j) For purposes of this section, “lawful custody” means
36 physical custody of a minor 72 hours old or younger accepted by
37 a person from a parent of the minor, who the person believes in
38 good faith is the parent of the minor, with the specific intent and
39 promise of effecting the safe surrender of the minor.

1 (k) Any identifying information that pertains to a parent or
2 individual who surrenders a child pursuant to this section, that is
3 obtained as a result of the questionnaire described in paragraph
4 (3) of subdivision (b) or in any other manner, is confidential,
5 shall be exempt from disclosure under the California Public
6 Records Act (Chapter 3.5 (commencing with Section 6250) of
7 Division 7 of Title 1 of the Government Code), and shall not be
8 disclosed by any personnel of a safe-surrender site that accepts
9 custody of a child pursuant to this section.

10 SEC. 2. Section 271.5 of the Penal Code is amended to read:

11 271.5. (a) No parent or other individual having lawful
12 custody of a minor child 72 hours old or younger may be
13 prosecuted for a violation of Section 270, 270.5, 271, or 271a if
14 he or she voluntarily surrenders physical custody of the child to
15 personnel on duty at a safe-surrender site.

16 (b) For purposes of this section, “safe-surrender site” has the
17 same meaning as defined in paragraph (1) of subdivision (a) of
18 Section 1255.7 of the Health and Safety Code.

19 (c) (1) For purposes of this section, “lawful custody” has the
20 same meaning as defined in subdivision (k) of Section 1255.7 of
21 the Health and Safety Code.

22 (2) For purposes of this section, “personnel” has the same
23 meaning as defined in paragraph (2) of subdivision (a) of Section
24 1255.7 of the Health and Safety Code.

25 SEC. 3. Section 300 of the Welfare and Institutions Code, as
26 amended by Section 3 of Chapter 824 of the Statutes of 2000, is
27 amended to read:

28 300. Any child who comes within any of the following
29 descriptions is within the jurisdiction of the juvenile court which
30 may adjudge that person to be a dependent child of the court:

31 (a) The child has suffered, or there is a substantial risk that the
32 child will suffer, serious physical harm inflicted nonaccidentally
33 upon the child by the child’s parent or guardian. For the purposes
34 of this subdivision, a court may find there is a substantial risk of
35 serious future injury based on the manner in which a less serious
36 injury was inflicted, a history of repeated inflictions of injuries
37 on the child or the child’s siblings, or a combination of these and
38 other actions by the parent or guardian which indicate the child is
39 at risk of serious physical harm. For purposes of this subdivision,
40 “serious physical harm” does not include reasonable and

1 age-appropriate spanking to the buttocks where there is no
2 evidence of serious physical injury.

3 (b) The child has suffered, or there is a substantial risk that the
4 child will suffer, serious physical harm or illness, as a result of
5 the failure or inability of his or her parent or guardian to
6 adequately supervise or protect the child, or the willful or
7 negligent failure of the child's parent or guardian to adequately
8 supervise or protect the child from the conduct of the custodian
9 with whom the child has been left, or by the willful or negligent
10 failure of the parent or guardian to provide the child with
11 adequate food, clothing, shelter, or medical treatment, or by the
12 inability of the parent or guardian to provide regular care for the
13 child due to the parent's or guardian's mental illness,
14 developmental disability, or substance abuse. No child shall be
15 found to be a person described by this subdivision solely due to
16 the lack of an emergency shelter for the family. Whenever it is
17 alleged that a child comes within the jurisdiction of the court on
18 the basis of the parent's or guardian's willful failure to provide
19 adequate medical treatment or specific decision to provide
20 spiritual treatment through prayer, the court shall give deference
21 to the parent's or guardian's medical treatment, nontreatment, or
22 spiritual treatment through prayer alone in accordance with the
23 tenets and practices of a recognized church or religious
24 denomination, by an accredited practitioner thereof, and shall not
25 assume jurisdiction unless necessary to protect the child from
26 suffering serious physical harm or illness. In making its
27 determination, the court shall consider (1) the nature of the
28 treatment proposed by the parent or guardian, (2) the risks to the
29 child posed by the course of treatment or nontreatment proposed
30 by the parent or guardian, (3) the risk, if any, of the course of
31 treatment being proposed by the petitioning agency, and (4) the
32 likely success of the courses of treatment or nontreatment
33 proposed by the parent or guardian and agency. The child shall
34 continue to be a dependent child pursuant to this subdivision only
35 so long as is necessary to protect the child from risk of suffering
36 serious physical harm or illness.

37 (c) The child is suffering serious emotional damage, or is at
38 substantial risk of suffering serious emotional damage, evidenced
39 by severe anxiety, depression, withdrawal, or untoward
40 aggressive behavior toward self or others, as a result of the

conduct of the parent or guardian or who has no parent or guardian capable of providing appropriate care. No child shall be found to be a person described by this subdivision if the willful failure of the parent or guardian to provide adequate mental health treatment is based on a sincerely held religious belief and if a less intrusive judicial intervention is available.

(d) The child has been sexually abused, or there is a substantial risk that the child will be sexually abused, as defined in Section 11165.1 of the Penal Code, by his or her parent or guardian or a member of his or her household, or the parent or guardian has failed to adequately protect the child from sexual abuse when the parent or guardian knew or reasonably should have known that the child was in danger of sexual abuse.

(e) The child is under the age of five *years* and has suffered severe physical abuse by a parent, or by any person known by the parent, if the parent knew or reasonably should have known that the person was physically abusing the child. For the purposes of this subdivision, “severe physical abuse” means any of the following: any single act of abuse which causes physical trauma of sufficient severity that, if left untreated, would cause permanent physical disfigurement, permanent physical disability, or death; any single act of sexual abuse which causes significant bleeding, deep bruising, or significant external or internal swelling; or more than one act of physical abuse, each of which causes bleeding, deep bruising, significant external or internal swelling, bone fracture, or unconsciousness; or the willful, prolonged failure to provide adequate food. A child may not be removed from the physical custody of his or her parent or guardian on the basis of a finding of severe physical abuse unless the social worker has made an allegation of severe physical abuse pursuant to Section 332.

(f) The child’s parent or guardian caused the death of another child through abuse or neglect.

(g) The child has been left without any provision for support; physical custody of the child has been voluntarily surrendered pursuant to Section 1255.7 of the Health and Safety Code and the child has not been reclaimed within the 14-day period specified in subdivision (e) of that section; the child’s parent has been incarcerated or institutionalized and cannot arrange for the care of the child; or a relative or other adult custodian with whom the

1 child resides or has been left is unwilling or unable to provide
2 care or support for the child, the whereabouts of the parent are
3 unknown, and reasonable efforts to locate the parent have been
4 unsuccessful.

5 (h) The child has been freed for adoption by one or both
6 parents for 12 months by either relinquishment or termination of
7 parental rights or an adoption petition has not been granted.

8 (i) The child has been subjected to an act or acts of cruelty by
9 the parent or guardian or a member of his or her household, or
10 the parent or guardian has failed to adequately protect the child
11 from an act or acts of cruelty when the parent or guardian knew
12 or reasonably should have known that the child was in danger of
13 being subjected to an act or acts of cruelty.

14 (j) The child's sibling has been abused or neglected, as defined
15 in subdivision (a), (b), (d), (e), or (i), and there is a substantial
16 risk that the child will be abused or neglected, as defined in those
17 subdivisions. The court shall consider the circumstances
18 surrounding the abuse or neglect of the sibling, the age and
19 gender of each child, the nature of the abuse or neglect of the
20 sibling, the mental condition of the parent or guardian, and any
21 other factors the court considers probative in determining
22 whether there is a substantial risk to the child.

23 It is the intent of the Legislature that nothing in this section
24 disrupt the family unnecessarily or intrude inappropriately into
25 family life, prohibit the use of reasonable methods of parental
26 discipline, or prescribe a particular method of parenting. Further,
27 nothing in this section is intended to limit the offering of
28 voluntary services to those families in need of assistance but who
29 do not come within the descriptions of this section. To the extent
30 that savings accrue to the state from child welfare services
31 funding obtained as a result of the enactment of the act that
32 enacted this section, those savings shall be used to promote
33 services which support family maintenance and family
34 reunification plans, such as client transportation, out-of-home
35 respite care, parenting training, and the provision of temporary or
36 emergency in-home caretakers and persons teaching and
37 demonstrating homemaking skills. The Legislature further
38 declares that a physical disability, such as blindness or deafness,
39 is no bar to the raising of happy and well-adjusted children and
40 that a court's determination pursuant to this section shall center

1 upon whether a parent's disability prevents him or her from
2 exercising care and control.

3 As used in this section, "guardian" means the legal guardian of
4 the child.

5 SEC. 4. Section 300 of the Welfare and Institutions Code, as
6 added by Section 3.5 of Chapter 824 of the Statutes of 2000, is
7 repealed.

8 SEC. 5. Section 361.5 of the Welfare and Institutions Code,
9 as amended by Section 7 of Chapter 918 of the Statutes of 2002,
10 is amended to read:

11 361.5. (a) Except as provided in subdivision (b), or when the
12 parent has voluntarily relinquished the child and the
13 relinquishment has been filed with the State Department of
14 Social Services, or upon the establishment of an order of
15 guardianship pursuant to Section 360, whenever a child is
16 removed from a parent's or guardian's custody, the juvenile court
17 shall order the social worker to provide child welfare services to
18 the child and the child's mother and statutorily presumed father
19 or guardians. Upon a finding and declaration of paternity by the
20 juvenile court or proof of a prior declaration of paternity by any
21 court of competent jurisdiction, the juvenile court may order
22 services for the child and the biological father, if the court
23 determines that the services will benefit the child. Child welfare
24 services, when provided, shall be provided as follows:

25 (1) For a child who, on the date of initial removal from the
26 physical custody of his or her parent or guardian, was three years
27 of age or older, court-ordered services shall not exceed a period
28 of 12 months from the date the child entered foster care, except
29 as otherwise provided in paragraph (3).

30 (2) For a child who, on the date of initial removal from the
31 physical custody of his or her parent or guardian, was under the
32 age of three years, court-ordered services shall not exceed a
33 period of six months from the date the child entered foster care.

34 (3) For the purpose of placing and maintaining a sibling group
35 together in a permanent home should reunification efforts fail,
36 for a child in a sibling group whose members were removed from
37 parental custody at the same time, and in which one member of
38 the sibling group was under the age of three years on the date of
39 initial removal from the physical custody of his or her parent or
40 guardian, court-ordered services to some or all of the sibling

1 group may be limited to a period of six months from the date the
2 child entered foster care. For the purposes of this paragraph, “a
3 sibling group” shall mean two or more children who are related
4 to each other as full or half-siblings.

5 Regardless of the age of the child, a child shall be deemed to
6 have entered foster care on the earlier of the date of the
7 jurisdictional hearing held pursuant to Section 356 or the date
8 that is 60 days after the date on which the child was initially
9 removed from the physical custody of his or her parent or
10 guardian.

11 Notwithstanding paragraphs (1), (2), and (3), court-ordered
12 services may be extended up to a maximum time period not to
13 exceed 18 months after the date the child was originally removed
14 from physical custody of his or her parent or guardian if it can be
15 shown, at the hearing held pursuant to subdivision (f) of Section
16 366.21, that the permanent plan for the child is that he or she will
17 be returned and safely maintained in the home within the
18 extended time period. The court shall extend the time period only
19 if it finds that there is a substantial probability that the child will
20 be returned to the physical custody of his or her parent or
21 guardian within the extended time period or that reasonable
22 services have not been provided to the parent or guardian. If the
23 court extends the time period, the court shall specify the factual
24 basis for its conclusion that there is a substantial probability that
25 the child will be returned to the physical custody of his or her
26 parent or guardian within the extended time period. The court
27 also shall make findings pursuant to subdivision (a) of Section
28 366 and subdivision (e) of Section 358.1.

29 When counseling or other treatment services are ordered, the
30 parent or guardian shall be ordered to participate in those
31 services, unless the parent’s or guardian’s participation is deemed
32 by the court to be inappropriate or potentially detrimental to the
33 child. Physical custody of the child by the parents or guardians
34 during the applicable time period under paragraph (1), (2), or (3)
35 shall not serve to interrupt the running of the period. If at the end
36 of the applicable time period, a child cannot be safely returned to
37 the care and custody of a parent or guardian without court
38 supervision, but the child clearly desires contact with the parent
39 or guardian, the court shall take the child’s desire into account in
40 devising a permanency plan.

1 In cases where the child was under the age of three years on the
2 date of the initial removal from the physical custody of his or her
3 parent or guardian or is a member of a sibling group as described
4 in paragraph (3), the court shall inform the parent or guardian
5 that the failure of the parent or guardian to participate regularly
6 in any court-ordered treatment programs or to cooperate or avail
7 himself or herself of services provided as part of the child
8 welfare services case plan may result in a termination of efforts
9 to reunify the family after six months. The court shall inform the
10 parent or guardian of the factors used in subdivision (e) of
11 Section 366.21 to determine whether to limit services to six
12 months for some or all members of a sibling group as described
13 in paragraph (3).

14 Except in cases where, pursuant to subdivision (b), the court
15 does not order reunification services, the court shall inform the
16 parent or parents of Section 366.26 and shall specify that the
17 parent's or parents' parental rights may be terminated.

18 (b) Reunification services need not be provided to a parent or
19 guardian described in this subdivision when the court finds, by
20 clear and convincing evidence, any of the following:

21 (1) That the whereabouts of the parent or guardian is
22 unknown. A finding pursuant to this paragraph shall be supported
23 by an affidavit or by proof that a reasonably diligent search has
24 failed to locate the parent or guardian. The posting or publication
25 of notices is not required in that search.

26 (2) That the parent or guardian is suffering from a mental
27 disability that is described in Chapter 2 (commencing with
28 Section 7820) of Part 4 of Division 12 of the Family Code and
29 that renders him or her incapable of utilizing those services.

30 (3) That the child or a sibling of the child has been previously
31 adjudicated a dependent pursuant to any subdivision of Section
32 300 as a result of physical or sexual abuse, that following that
33 adjudication the child had been removed from the custody of his
34 or her parent or guardian pursuant to Section 361, that the child
35 has been returned to the custody of the parent or guardian from
36 whom the child had been taken originally, and that the child is
37 being removed pursuant to Section 361, due to additional
38 physical or sexual abuse.

39 (4) That the parent or guardian of the child has caused the
40 death of another child through abuse or neglect.

1 (5) That the child was brought within the jurisdiction of the
2 court under subdivision (e) of Section 300 because of the conduct
3 of that parent or guardian.

4 (6) That the child has been adjudicated a dependent pursuant
5 to any subdivision of Section 300 as a result of severe sexual
6 abuse or the infliction of severe physical harm to the child, a
7 sibling, or a half-sibling by a parent or guardian, as defined in
8 this subdivision, and the court makes a factual finding that it
9 would not benefit the child to pursue reunification services with
10 the offending parent or guardian.

11 A finding of severe sexual abuse, for the purposes of this
12 subdivision, may be based on, but is not limited to, sexual
13 intercourse, or stimulation involving genital-genital, oral-genital,
14 anal-genital, or oral-anal contact, whether between the parent or
15 guardian and the child or a sibling or half-sibling of the child, or
16 between the child or a sibling or half-sibling of the child and
17 another person or animal with the actual or implied consent of
18 the parent or guardian; or the penetration or manipulation of the
19 child's, sibling's, or half-sibling's genital organs or rectum by
20 any animate or inanimate object for the sexual gratification of the
21 parent or guardian, or for the sexual gratification of another
22 person with the actual or implied consent of the parent or
23 guardian.

24 A finding of the infliction of severe physical harm, for the
25 purposes of this subdivision, may be based on, but is not limited
26 to, deliberate and serious injury inflicted to or on a child's body
27 or the body of a sibling or half-sibling of the child by an act or
28 omission of the parent or guardian, or of another individual or
29 animal with the consent of the parent or guardian; deliberate and
30 torturous confinement of the child, sibling, or half-sibling in a
31 closed space; or any other torturous act or omission that would be
32 reasonably understood to cause serious emotional damage.

33 (7) That the parent is not receiving reunification services for a
34 sibling or a half-sibling of the child pursuant to paragraph (3),
35 (5), or (6).

36 (8) That the child was conceived by means of the commission
37 of an offense listed in Section 288 or 288.5 of the Penal Code, or
38 by an act committed outside of this state that, if committed in this
39 state, would constitute one of those offenses. This paragraph only
40 applies to the parent who committed the offense or act.

1 (9) That the child has been found to be a child described in
2 subdivision (g) of Section 300, that the parent or guardian of the
3 child willfully abandoned the child, and the court finds that the
4 abandonment itself constituted a serious danger to the child; or
5 that the parent or other person having custody of the child
6 voluntarily surrendered physical custody of the child pursuant to
7 Section 1255.7 of the Health and Safety Code. For the purposes
8 of this paragraph, “serious danger” means that without the
9 intervention of another person or agency, the child would have
10 sustained severe or permanent disability, injury, illness, or death.
11 For purposes of this paragraph, “willful abandonment” shall not
12 be construed as actions taken in good faith by the parent without
13 the intent of placing the child in serious danger.

14 (10) That the court ordered termination of reunification
15 services for any siblings or half-siblings of the child because the
16 parent or guardian failed to reunify with the sibling or
17 half-sibling after the sibling or half-sibling had been removed
18 from that parent or guardian pursuant to Section 361 and that
19 parent or guardian is the same parent or guardian described in
20 subdivision (a) and that, according to the findings of the court,
21 this parent or guardian has not subsequently made a reasonable
22 effort to treat the problems that led to removal of the sibling or
23 half-sibling of that child from that parent or guardian.

24 (11) That the parental rights of a parent over any sibling or
25 half-sibling of the child had been permanently severed, and this
26 parent is the same parent described in subdivision (a), and that,
27 according to the findings of the court, this parent has not
28 subsequently made a reasonable effort to treat the problems that
29 led to removal of the sibling or half-sibling of that child from the
30 parent.

31 (12) That the parent or guardian of the child has been
32 convicted of a violent felony, as defined in subdivision (c) of
33 Section 667.5 of the Penal Code.

34 (13) That the parent or guardian of the child has a history of
35 extensive, abusive, and chronic use of drugs or alcohol and has
36 resisted prior court-ordered treatment for this problem during a
37 three-year period immediately prior to the filing of the petition
38 that brought that child to the court’s attention, or has failed or
39 refused to comply with a program of drug or alcohol treatment
40 described in the case plan required by Section 358.1 on at least

1 two prior occasions, even though the programs identified were
2 available and accessible.

3 (14) That the parent or guardian of the child has advised the
4 court that he or she is not interested in receiving family
5 maintenance or family reunification services or having the child
6 returned to or placed in his or her custody and does not wish to
7 receive family maintenance or reunification services.

8 The parent or guardian shall be represented by counsel and
9 shall execute a waiver of services form to be adopted by the
10 Judicial Council. The court shall advise the parent or guardian of
11 any right to services and of the possible consequences of a
12 waiver of services, including the termination of parental rights
13 and placement of the child for adoption. The court shall not
14 accept the waiver of services unless it states on the record its
15 finding that the parent or guardian has knowingly and
16 intelligently waived the right to services.

17 (15) That the parent or guardian has on one or more occasions
18 willfully abducted the child or child's sibling or half-sibling from
19 his or her placement and refused to disclose the child's or child's
20 sibling's or half-sibling's whereabouts, refused to return physical
21 custody of the child or child's sibling or half-sibling to his or her
22 placement, or refused to return physical custody of the child or
23 child's sibling or half-sibling to the social worker.

24 (c) In deciding whether to order reunification in any case in
25 which this section applies, the court shall hold a dispositional
26 hearing. The social worker shall prepare a report that discusses
27 whether reunification services shall be provided. When it is
28 alleged, pursuant to paragraph (2) of subdivision (b), that the
29 parent is incapable of utilizing services due to mental disability,
30 the court shall order reunification services unless competent
31 evidence from mental health professionals establishes that, even
32 with the provision of services, the parent is unlikely to be capable
33 of adequately caring for the child within the time limits specified
34 in subdivision (a).

35 The court shall not order reunification for a parent or guardian
36 described in paragraph (3), (4), (6), (7), (8), (9), (10), (11), (12),
37 (13), (14), or (15) of subdivision (b) unless the court finds, by
38 clear and convincing evidence, that reunification is in the best
39 interest of the child.

1 In addition, the court shall not order reunification in any
2 situation described in paragraph (5) of subdivision (b) unless it
3 finds that, based on competent testimony, those services are
4 likely to prevent reabuse or continued neglect of the child or that
5 failure to try reunification will be detrimental to the child
6 because the child is closely and positively attached to that parent.
7 The social worker shall investigate the circumstances leading to
8 the removal of the child and advise the court whether there are
9 circumstances that indicate that reunification is likely to be
10 successful or unsuccessful and whether failure to order
11 reunification is likely to be detrimental to the child.

12 The failure of the parent to respond to previous services, the
13 fact that the child was abused while the parent was under the
14 influence of drugs or alcohol, a past history of violent behavior,
15 or testimony by a competent professional that the parent's
16 behavior is unlikely to be changed by services are among the
17 factors indicating that reunification services are unlikely to be
18 successful. The fact that a parent or guardian is no longer living
19 with an individual who severely abused the child may be
20 considered in deciding that reunification services are likely to be
21 successful, provided that the court shall consider any pattern of
22 behavior on the part of the parent that has exposed the child to
23 repeated abuse.

24 (d) If reunification services are not ordered pursuant to
25 paragraph (1) of subdivision (b) and the whereabouts of a parent
26 become known within six months of the out-of-home placement
27 of the child, the court shall order the social worker to provide
28 family reunification services in accordance with this subdivision.

29 (e) (1) If the parent or guardian is incarcerated or
30 institutionalized, the court shall order reasonable services unless
31 the court determines, by clear and convincing evidence, those
32 services would be detrimental to the child. In determining
33 detriment, the court shall consider the age of the child, the degree
34 of parent-child bonding, the length of the sentence, the nature of
35 the treatment, the nature of the crime or illness, the degree of
36 detriment to the child if services are not offered and, for children
37 10 years of age or older, the child's attitude toward the
38 implementation of family reunification services, and any other
39 appropriate factors. Reunification services are subject to the

1 applicable time limitations imposed in subdivision (a). Services
2 may include, but shall not be limited to, all of the following:

3 (A) Maintaining contact between the parent and child through
4 collect telephone calls.

5 (B) Transportation services, where appropriate.

6 (C) Visitation services, where appropriate.

7 (D) Reasonable services to extended family members or foster
8 parents providing care for the child if the services are not
9 detrimental to the child.

10 An incarcerated parent may be required to attend counseling,
11 parenting classes, or vocational training programs as part of the
12 service plan if these programs are available.

13 (2) The presiding judge of the juvenile court of each county
14 may convene representatives of the county welfare department,
15 the sheriff's department, and other appropriate entities for the
16 purpose of developing and entering into protocols for ensuring
17 the notification, transportation, and presence of an incarcerated
18 or institutionalized parent at all court hearings involving
19 proceedings affecting the child pursuant to Section 2625 of the
20 Penal Code.

21 (3) Notwithstanding any other provision of law, if the
22 incarcerated parent is a woman seeking to participate in the
23 community treatment program operated by the Department of
24 Corrections pursuant to Chapter 4.8 (commencing with Section
25 1174) of Title 7 of Part 2 of, Chapter 4 (commencing with
26 Section 3410) of Title 2 of Part 3 of, the Penal Code, the court
27 shall determine whether the parent's participation in a program is
28 in the child's best interest and whether it is suitable to meet the
29 needs of the parent and child.

30 (f) If the court, pursuant to paragraph (2), (3), (4), (5), (6), (7),
31 (8), (9), (10), (11), (12), (13), (14), or (15) of subdivision (b) or
32 paragraph (1) of subdivision (e), does not order reunification
33 services, it shall, at the dispositional hearing, that shall include a
34 permanency hearing, determine if a hearing under Section 366.26
35 shall be set in order to determine whether adoption, guardianship,
36 or long-term foster care is the most appropriate plan for the child.
37 If the court so determines, it shall conduct the hearing pursuant to
38 Section 366.26 within 120 days after the dispositional hearing.
39 However, the court shall not schedule a hearing so long as the
40 other parent is being provided reunification services pursuant to

1 subdivision (a). The court may continue to permit the parent to
2 visit the child unless it finds that visitation would be detrimental
3 to the child.

4 (g) Whenever a court orders that a hearing shall be held
5 pursuant to Section 366.26, it shall direct the agency supervising
6 the child and the licensed county adoption agency, or the State
7 Department of Social Services when it is acting as an adoption
8 agency in counties that are not served by a county adoption
9 agency, to prepare an assessment that shall include:

10 (1) Current search efforts for an absent parent or parents.

11 (2) A review of the amount of and nature of any contact
12 between the child and his or her parents and other members of
13 his or her extended family since the time of placement. Although
14 the extended family of each child shall be reviewed on a
15 case-by-case basis, “extended family” for the purpose of this
16 paragraph shall include, but not be limited to, the child’s siblings,
17 grandparents, aunts, and uncles.

18 (3) An evaluation of the child’s medical, developmental,
19 scholastic, mental, and emotional status.

20 (4) A preliminary assessment of the eligibility and
21 commitment of any identified prospective adoptive parent or
22 guardian, particularly the caretaker, to include a social history
23 including screening for criminal records and prior referrals for
24 child abuse or neglect, the capability to meet the child’s needs,
25 and the understanding of the legal and financial rights and
26 responsibilities of adoption and guardianship. If a proposed
27 guardian is a relative of the minor, and the relative was assessed
28 for foster care placement of the minor prior to January 1, 1998,
29 the assessment shall also consider, but need not be limited to, all
30 of the factors specified in subdivision (a) of Section 361.3. As
31 used in this paragraph, “relative” means an adult who is related
32 to the minor by blood, adoption, or affinity within the fifth
33 degree of kinship, including stepparents, stepsiblings, and all
34 relatives whose status is preceded by the words “great,”
35 “great-great,” or “grand,” or the spouse of any of those persons
36 even if the marriage was terminated by death or dissolution.

37 (5) The relationship of the child to any identified prospective
38 adoptive parent or guardian, the duration and character of the
39 relationship, the motivation for seeking adoption or guardianship,
40 and a statement from the child concerning placement and the

1 adoption or guardianship, unless the child's age or physical,
2 emotional, or other condition precludes his or her meaningful
3 response, and if so, a description of the condition.

4 (6) An analysis of the likelihood that the child will be adopted
5 if parental rights are terminated.

6 (h) In determining whether reunification services will benefit
7 the child pursuant to paragraph (6) or (7) of subdivision (b), the
8 court shall consider any information it deems relevant, including
9 the following factors:

10 (1) The specific act or omission comprising the severe sexual
11 abuse or the severe physical harm inflicted on the child or the
12 child's sibling or half-sibling.

13 (2) The circumstances under which the abuse or harm was
14 inflicted on the child or the child's sibling or half-sibling.

15 (3) The severity of the emotional trauma suffered by the child
16 or the child's sibling or half-sibling.

17 (4) Any history of abuse of other children by the offending
18 parent or guardian.

19 (5) The likelihood that the child may be safely returned to the
20 care of the offending parent or guardian within 12 months with
21 no continuing supervision.

22 (6) Whether or not the child desires to be reunified with the
23 offending parent or guardian.

24 (i) The court shall read into the record the basis for a finding
25 of severe sexual abuse or the infliction of severe physical harm
26 under paragraph (6) of subdivision (b), and shall also specify the
27 factual findings used to determine that the provision of
28 reunification services to the offending parent or guardian would
29 not benefit the child.

30 SEC. 6. Section 361.5 of the Welfare and Institutions Code,
31 as amended by Section 8 of Chapter 918 of the Statutes of 2002,
32 is repealed.

33 SEC. 7. Section 14005.24 of the Welfare and Institutions
34 Code is amended to read:

35 14005.24. The department shall instruct counties, by means
36 of an all county letter or similar instruction, as to the process that
37 is to be used to ensure that each child, physical custody of whom
38 has been voluntarily surrendered pursuant to Section 1255.7 of
39 the Health and Safety Code, shall be determined eligible for
40 benefits under this chapter for, at a minimum, a period of time

1 commencing on the date physical custody is surrendered and
2 ending on the earliest of the following dates:

3 (a) The last day of the month following the month in which the
4 child was voluntarily surrendered under Section 1255.7 of the
5 Health and Safety Code.

6 (b) The date the child is reclaimed under Section 1255.7 of the
7 Health and Safety Code.

8 (c) The date the child ceases to reside in California.

9 SEC. 8. If the Commission on State Mandates determines that
10 this act contains costs mandated by the state, reimbursement to
11 local agencies and school districts for those costs shall be made
12 pursuant to Part 7 (commencing with Section 17500) of Division
13 4 of Title 2 of the Government Code.

14
15
16 **CORRECTIONS:**
17 **Text-Pages 1 and 7.**
18